
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

WSJM, Inc.
Radio Station WGMY
South Haven, Michigan

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File No. EB-02-DT-1240
NAL/Acct. No. 200332360005
FRN: 0007 1714 32

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 17, 2003

By the District Director, Detroit Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that WSJM, Inc., ("WSJM"), licensee of radio station WGMY, South Haven, Michigan, has apparently violated Sections 11.52(d), 11.61(a)(2)(i)(A), 17.4(a), 17.47(a)(1), 17.51(a), 73.1820(a)(1)(i), 73.1820(a)(1)(iii), and 73.1870(c)(3) of the Commission's Rules ("Rules")¹. Respectively, these sections require that the station monitor two EAS sources specified in the State EAS Plan; conduct tests of the EAS header and EOM codes at least once a week at random days and times; register the two antenna structures; observe the antenna structure's lights at least once each 24 hours either visually or by observing an automatic indicator to insure that all lights are functioning properly; exhibit all red obstruction lighting from sunset to sunrise; make log entries concerning any observed or otherwise known extinguishment or improper functioning of a tower light; make entries of each test and activation of the Emergency Alert System (EAS); and make log entries concerning the Chief operator's review of the station records at least once each week. We conclude that WSJM is apparently liable for a forfeiture in the amount of nineteen thousand dollars (\$19,000).

II. BACKGROUND

2. On September 23, 2002, the Detroit Office received information indicating that the two top flashing obstruction lights on each of two antenna structures and the side lights on one of the two antenna structures located at the corner of Wells and Dunkey Streets in South Haven, Michigan were not operating for two months. A search of the Antenna Structure Registration database did not contain any registered structures in the area reported. A check of the AM broadcast band database showed that a two tower directional license was assigned to WSJM, Inc. The South Haven Police department was contacted and requested to observe the tower lights after sunset to determine if the complaint was still valid.

3. On September 24, 2002, the Detroit Office received a telephonic report from the South Haven Police department confirming the tower light outages. An agent contacted the FAA, who subsequently notified WSJM, Inc. of the tower light outage report and then issued a Notice to Airmen

¹ 47 C.F.R. §§ 11.52(d), 11.61(a)(2)(i)(A), 17.4(a), 17.47(a)(1), 17.51(a), 73.1820(a)(1)(i), 73.1820(a)(1)(iii), and 73.1870(c)(3).

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(NOTAM).

4. On November 20, 2002, agents from the Detroit Office conducted an inspection of WGMY's antenna structures. No Antenna Structure Registration Numbers were posted and all required structure lighting was operational. On November 21, 2002, the agents inspected WGMY with studios located at 510 Williams Street, South Haven, Michigan and at the main office located at 580 E. Napier, Benton Harbor, Michigan.

5. As a result of the inspection of WGMY, the agents found several violations of FCC Rules, including failure to maintain a copy of the Emergency Alert System (EAS) Operating Handbook, failure to monitor two EAS sources specified in the State EAS Plan; failure to conduct tests of the EAS header and EOM codes at least once a week at random days and times for seven weeks during the period of September 1, 2002 to November 2, 2002; failure to register the two antenna structures; failure to observe the antenna structure's lights at least once each 24 hours either visually or by observing an automatic indicator to insure that all lights are functioning properly from at least September 18, 2002 to September 24, 2002; failure to report the tower light outages and repairs to the Federal Aviation Administration from at least September 18, 2002 to November 21, 2002; failure to exhibit all red obstruction lighting from sunset to sunrise from at least September 18, 2002 to September 24, 2002; failure to make log entries concerning any observed or otherwise known extinguishment or improper functioning of a tower light from at least September 18, 2002 to September 24, 2002; failure to make entries of each test and activation of the Emergency Alert System (EAS) for four weeks for the local primary station and eleven weeks for the alternate local primary station during the period of September 1, 2002 to November 21, 2002; and failure to make log entries concerning the chief operator's review of the station records at least once each week.

6. On December 5, 2002, the FCC's Detroit Office issued a Notice of Violation to WGMY for the FCC Rule violations.

7. On December 16, 2002, the FCC's Detroit Office received a reply dated December 13, 2002 indicating the corrective steps instituted by WSJM, Inc.

III. DISCUSSION

8. Section 11.52(d) requires that the station monitor two EAS sources specified in the State EAS Plan. Section 11.61(a)(2)(i)(A) requires that the station conduct tests of the EAS header and EOM codes at least once a week at random days and times. Section 17.4(a) requires that antenna structures that have been assigned painting or lighting requirements be registered with the Commission. Section 17.47(a)(1) requires that antenna structures which have been assigned lighting specifications shall make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights. Section 17.51(a) requires that all red obstruction lighting be exhibited from sunset to sunrise. Section 73.1820(a)(1)(i) requires that log entries be made of any observed or otherwise known extinguishment or improper functioning of a tower light. Section 73.1820(a)(1)(iii) requires that log entries be made of each test and activation of the Emergency Alert System (EAS). Section 73.1870(c)(3) requires that the chief operator make log entries concerning the review of the station records at least once each week.

9. Based on the evidence before us, we find that WSJM willfully² and repeatedly³ violated

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and

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Sections 73.1820(a)(1)(i), 73.1820(a)(1)(iii) and 73.1870(c)(3) for failure to maintain required records; Sections 11.52(d), 11.61(a)(2)(i)(A), and 17.47(a)(1) for failure to make required measurements or conduct required monitoring regarding EAS monitoring sources, EAS tests, and observation of the antenna structure's lights; Sections 17.4(a) for failure to file required forms or information regarding the registration of the two antenna structures; and Section 17.51(a) for failure to comply with prescribed lighting and/or marking. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁴, sets the base forfeiture amount at \$1,000 for failing to maintain required records, \$2,000 for failure to make required measurements or conduct required monitoring, \$3,000 each (two towers) for failure to file required forms or information for the two antenna structures and \$10,000 for failure to comply with prescribed lighting and/or marking. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934,⁵ as amended, ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. The record reveals that WSJM has a history of compliance. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a nineteen thousand dollar (\$19,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Rules⁷, WSJM, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of nineteen thousand dollars (\$19,000) for willful and repeated violation of 11.52(d), 11.61(a)(2)(i)(A), 17.4(a), 17.47(a)(1), 17.51(a), 73.1820(a)(1)(i), 73.1820(a)(1)(iii), and 73.1870(c)(3) of the Rules.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this NOTICE OF APPARENT LIABILITY, WSJM, INC. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance

deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, and 0.311.

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Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332360005, FRN: 0007 1714 32.

13. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE the NAL/Acct. No. 200332360005, FRN: 0007 1714 32.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street S.W., Washington, D.C. 20554. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have any questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to WSJM, Inc., P.O. Box 107, St. Joseph, Michigan 49085.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office

⁸ See 47 C.F.R. § 1.1914.

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Attachment A – FCC List of Small Entities, October 2002